IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel. W. A. DREW EDMONDSON, in his capacity as ATTORNEY GENERAL OF THE STATE OF OKLAHOMA and OKLAHOMA SECRETARY OF THE ENVIRONMENT C. MILES TOLBERT, in his capacity as the TRUSTEE FOR NATURAL RESOURCES FOR THE STATE OF OKLAHOMA,	)	
Plaintiff,	)	
vs.	)	**05-CV-0329 GKF-SAJ**
TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC., COBB-VANTRESS, INC., AVIAGEN, INC., CAL-MAINE FOODS, INC., CAL-MAINE FARMS, INC., CARGILL, INC., CARGILL TURKEY PRODUCTION, LLC, GEORGE'S, INC., GEORGE'S FARMS, INC., PETERSON FARMS, INC., SIMMONS FOODS, INC., and WILLOW BROOK FOODS, INC.,	)	
Defendants.	)	

DEFENDANTS' MOTION TO AMEND SCHEDULE FOR HEARING ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND DEFENDANTS' RESPONSE THERETO

Defendants, Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., Cobb-Vantress, Inc., Cal-Maine Foods, Inc., Cal-Maine Farms, Inc., Cargill, Inc., Cargill Turkey Production, LLC, George's, Inc., George's Farms, Inc., Peterson Farms, Inc., Simmons Foods, Inc., and Willow Brook Foods, Inc. hereby request that the Court strike the date for the hearing on Plaintiffs' Motion for Preliminary Injunction (the "PI Motion") currently set to commence on February 19, 2008, as well as the deadline for Defendants to respond to the PI Motion currently set on February 8, 2008. As part of their Motion, Defendants also request the Court direct that the expert testimony offered by Plaintiffs at said hearing shall be limited in scope to those

opinions disclosed in Plaintiffs' experts' affidavits appended to the PI Motion and the expert materials disclosed in conformance with the Court's rulings during the hearing of December 7, 2007 [Dkt. 1411], and Order of December 26, 2007 [Dkt No. 1425]. As addressed in their Motion for Expedited Consideration filed contemporaneously herewith, Defendants request that the Court take up and resolve their request for relief at its earliest available opportunity.

Defendants bring their request for relief based upon Plaintiffs' repeated, serious and material violations of the Court's Orders establishing dates certain by which all of their expert materials must be produced to Defendants, coupled with Plaintiffs' counsels' repeated assertions to Defendants that: (1) Plaintiffs' experts' opinions stated in their Affidavits and disclosed in their depositions are not final for purposes of the hearing on the PI Motion; and (2) Plaintiffs' experts are free to change or add to their expert opinions to be presented at the hearing on the PI Motion.

ARGUMENT AND AUTHORITY

Just eight days after the Court held a hearing to consider the parties' positions with regard to scheduling the remainder of the benchmarks leading up to and including the trial on the merits of this action,[1] Plaintiffs surprised the Court and Defendants by filing a broadly sweeping Motion for Preliminary Injunction seeking to bring an abrupt halt to farmers' and ranchers' long-standing and state-authorized agricultural practice of utilizing poultry litter as a fertilizer and soil amendment in the 1,000,000 acre Illinois River Watershed ("IRW"). [Dkt. No. 1373.] Plaintiffs purported to support their PI Motion with conclusory Affidavits from nine (9) previously undisclosed experts who propounded opinions on soil science, agronomy, geology, hydrogeology, toxicology, epidemiology, internal medicine, recreation, economics, agricultural

[1] *See* Minutes of Hearing, Dkt. No. 1369.

engineering, microbiology, and novel "fingerprinting" techniques. Plaintiffs brought their request for a preliminary mandatory injunction founded upon the assertion that poultry litter is a "solid waste" regulated under the 1976 Amendments to the federal Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"), and that its continued use in agriculture in the IRW by poultry farmers, non-poultry farmers, ranchers and cattlemen is causing an "imminent and substantial endangerment to human health and the environment" in the IRW. *Id.* Plaintiffs requested a hearing date within 60 days and claimed that the Court must act to stop the farmers and ranchers from land applying poultry litter to fertilize their spring forage crops. By virtue of their requests, Plaintiffs sought to achieve the full measure of relief they could conceivably obtain at the trial on the merits of their RCRA claim while allowing Defendants only 60 days to conduct expert and fact discovery, retain experts to evaluate and respond to Plaintiffs' experts' contentions, and prepare to try this matter to the Court.

On December 7, 2007, the Court held a telephonic hearing to discuss substantive issues, scheduling issues, and to determine the nature of discovery that Defendants would receive in order to prepare for the hearing on the PI Motion. [Trans. of Proceedings on Dec. 7, 2007, Dkt. No. 1411.] In this hearing, the Court made several holdings, Plaintiffs' violations of which form the underpinnings of Defendants' instant Motion, to wit:

1. The basis for Plaintiffs' experts' opinions must be made available to Defendants. *Id.* at p.35, ll.17-21; and
2. Plaintiffs must provide Defendants all of the materials each expert considered for the PI Motion twenty-one days prior to the date set for that expert's deposition. *Id.* at p.36, ll.7-8; 39, l.11; 41, ll.15-25.

In response to the Court's directives, Plaintiffs' counsel, Mr. Bullock, represented to the Court and Defendants:

> [I]f it's truly helpful to this process and will get us moving towards the hearing that we need, we will go ahead and go to the task of getting all of the materials considered concerning the bacteria case and get those to the defendants so they will - - there's nothing being hidden here, there's no I am being so selective that my choosing things, choosing to ignore things which are unhelpful, and so we will go ahead and be open about that and present all of the things considered for the bacteria case at this point.

Id. at p. 41, ll.5-14 (emphasis added).

Shortly after the hearing, Defendants and Plaintiffs reached an impasse on the sequence of Plaintiffs' experts' depositions, the dates for those depositions and the resulting deadlines for producing each expert's file materials to Defendants. Consequently, on December 19, 2007, Defendants filed their Emergency Motion to Compel the Setting of a Reasonable Schedule for Expert Depositions and the Timely Production of Related Documents. [Dkt. No. 1414.] Magistrate Judge Joyner heard the matter on December 21, 2007, and sustained Defendants' Motion. [Order, Dkt. No. 1425.] Specifically, Judge Joyner ordered Plaintiffs to adhere to the following expert deposition dates and document production deadlines:

Expert	Production of Materials	Date
Robert Lawrence	No later than 12/13/07	1/3/08
C. Robert Taylor	No later than 12/18/07	1/8/08
Bernard Engle	No later than 12/25/07	1/15/08
Berton Fisher	No later than 1/2/08	1/23/08
Roger Olsen	No later than 1/4/08	1/25/08
Valerie Harwood	No later than 1/8/08	1/29/08
Christopher Teaf	No later than 1/10/08	1/31/08

Gordon Johnson	No later than 1/14/08	2/4/08
Lowell Caneday	No later than 1/15/08	2/5/08

Id. at 1-2. Judge Joyner explicitly ordered that the experts' production must comply with Fed. R. Civ. P. 26(a)(2)(b), including "all data considered by these experts regardless of whether such data is relied upon by the expert as a basis for the expert's opinions." *Id.* at 2.

Plaintiffs have failed to comply with the Court's directives issued in the December 7, 2007 hearing and the Court's explicit schedule set forth in Judge Joyner's Order of December 26, 2006, the result of which is serious prejudice to Defendants' and their experts' ability to prepare to meet Plaintiffs' PI Motion by the response deadline and the current hearing date.

1. Plaintiffs Have Repeatedly Produced Expert Materials Well After the Court-Ordered Deadline

Thirty-one months into this litigation, Plaintiffs have proven themselves to be the architects of a serious crisis of timing, which if allowed to proceed on its current course, will seriously impair Defendants' rights of due process. The Court is aware of the progress of this case; hence, Defendants will not burden the record by repeating what has gone before. Yet, the duration of this litigation is relevant in that Defendants have learned through discovery in the past thirty days that the key experts offered to support the PI Motion have been working constantly on Plaintiffs' payroll since at least 2004. [*See* excerpts of Deposition of Berton Fisher taken on January 23, 2008, p.36, ll.8-15, attached hereto as Ex. "1" (disclosing that Dr. Fisher has worked on this case every month since late 2004).] Despite working on their expert case for over three years, and despite advancing the contention that an imminent health threat exists in the IRW, Plaintiffs waited until November 14, 2007 to file their PI Motion asserting that an emergency existed that justified a January 2008 evidentiary hearing.

Defendants understand the Court's comments in the hearings of December 7 and 21, 2007 to reflect the Court's appreciation for the very difficult position in which Plaintiffs' surprise Motion placed Defendants, not the least of which was preparing to meet a large volume of highly technical materials presented by nine newly disclosed experts.[2] Defendants also viewed the Court's Orders as its decision to strike a balance between Plaintiffs' desire for a quick hearing date and Defendants' right to full disclosure, discovery, and at least a bare minimum of time to prepare their defenses, both to assemble materials for their Response briefs and to present their case at the hearing before the Court. Both the Court's ruling that expert materials must be produced twenty-one days prior to each deposition and the condensed expert deposition schedule have virtually zero flexibility; *i.e.*, there is simply no time for gamesmanship or the lack of diligence.

The nature of Defendants' prejudice resulting from Plaintiffs' failure to adhere to the expert disclosure Orders is self-evident. The expert Affidavits accompanying the PI Motion were conclusory, included only bare bones assertions without explanation or analysis, and were not accompanied by any of the bases for the experts' opinions.[3] Defendants were compelled to undertake two separate Motions and hearings with the Court to establish the process through which they would receive Plaintiffs' experts' materials, which further limited Defendants' time

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[2] As the following discussion highlights, Plaintiffs' arguments that they provided Defendants all of the environmental sampling and analysis information as part of their purported "rolling production" since ordered to do so on January 5, 2007 [Dkt. No. 1016], rings hollow. Not only have the "expert" productions included never before disclosed data, but Plaintiffs have continued to take and analyze samples from poultry farmers' properties into 2008. [*See* Dkt. No. 1369, Minutes of Proceedings before the Court on November 6, 2007 addressing discovery motions regarding non-party property sampling.]

[3] By way of example, the Affidavit of Dr. Roger Olsen states makes reference to a purported "signature" for poultry waste, which forms the basis for Dr. Olsen's opinions, yet in the entire seven-page Affidavit, Dr. Olsen never identifies what the purported "signature" is or how it was derived. [Dkt. No. 1373-18.]

to analyze and prepare to cross examine these experts. In a nutshell, Plaintiffs picked the timing for their PI Motion, and if they were to receive a quick hearing date before the spring growing season as they requested, then they should have been precise and prepared to fully meet their disclosure obligations. As discussed below, in multiple instances Plaintiffs have ignored these court-ordered obligations, which have destroyed any meaningful opportunity for Defendants to meet their and their experts' needs for timely disclosure and adequate time to prepare.

a. Dr. Bernard Engle

Pursuant to Judge Joyner's Order, Plaintiffs were required to produce all of Dr. Engle's expert materials by no later than December 25, 2007. Plaintiffs failed to meet this obligation. On January 15, 2008, during Dr. Engle's deposition, Plaintiffs produced a listing of Internet resources relied upon by Dr. Engle, which included information about slaughter weights, University of Missouri water quality data, USGS land cover data, and extensive agricultural census data. [*See* E-mail correspondence from Nicole Longwell, dated January 16, 2008, attached hereto as Ex. "2".] For an example of the data first disclosed on this date, *see* http://www.mrlc.gov/mrlc2k_nlcd.asp, the portal to the land cover data purportedly relied upon by Dr. Engle. On January 22, 2008, after Dr. Engle's deposition, Plaintiffs provided Defendants with the list of deposition transcripts Dr. Engle considered. [*See* Correspondence from Clair Xidis to defense counsel, dated January 22, 2008, attached hereto as Ex. "3".] On January 25, 2008, after Dr. Engle's deposition had been taken, Plaintiffs identified for the first time materials within Dr. Fisher's file that have been provided to Dr. Engle but not produced with Engle's materials. [*See* E-mail correspondence from Claire Xidis, dated January 25, 2008, attached hereto as Ex. "4".]

b. Dr. Berton Fisher

Pursuant to Judge Joyner's Order, Plaintiffs were required to produce all of Dr. Fisher's expert materials by no later than January 2, 2008. Plaintiffs failed to meet this obligation. On January 18, 2008, just three days before Dr. Fisher's deposition, Plaintiffs produced two water quality/hydrology studies encompassing the IRW which Dr. Fisher purportedly considered. [*See* E-mail correspondence from Claire Xidis, dated January 18, 2008, attached hereto as Ex. "5".] During Dr. Fisher's deposition on January 23, 2008, Defendants discovered that Dr. Fisher had considered animal census and bacteria production information for livestock and wildlife (prepared by a previously undisclosed consultant) that were included within the materials produced for Dr. Teaf, but not within the materials produced for Dr. Fisher. [*See* E-mail correspondence from David Page, dated January 25, 2008, attached hereto as Ex. "6".]

c. Dr. Valerie Harwood

Pursuant to Judge Joyner's Order, Plaintiffs were required to produce all of Dr. Harwood's expert materials by no later than January 8, 2008. Plaintiffs failed to meet this obligation. On January 11, 2008, Plaintiffs produced for the first time additional analytical data from Northwind Laboratory, along with a number of spreadsheets that were incomplete in the original production. [*See* Correspondence from Claire Xidis to Jay Jorgenson, dated January 11, 2008, attached hereto as Ex. "7".] On January 22, Plaintiffs produced additional materials considered by Dr. Harwood. [*See* Ex. 3 at p.2.] On January 25, 2008, less than two business days prior to Dr. Harwood's deposition on January 29, Plaintiffs identified for the first time materials within Dr. Fisher's file that have been provided to Dr. Harwood. [*See* Ex. "4".]

Plaintiffs' breach with regard to Dr. Harwood is particularly egregious in that their disclosure of information on January 8, 2008 revealed for the first time that Plaintiffs were in possession of data derived from DNA analyses from as far back as September 2006. [*See* Data Summary and Analysis Report, dated September 5, 2006, attached hereto as Ex. "8".] Withholding this 2006 testing data from Defendants until 2008 is a clear violation of the Court's Order of January 5, 2007, in which Plaintiffs were directed to produce all "monitoring, sampling and testing data and related documents." [Order Dkt. No. 1016 at 6, 8.][4]

d. Dr. Christopher Teaf

Pursuant to Judge Joyner's Order, Plaintiffs were required to produce all of Dr. Teaf's expert materials by no later than January 10, 2008. Plaintiffs failed to meet this obligation. On January 21, 2008, Plaintiffs produced for the first time correspondence with the Oklahoma Water Resources Board and a decision document related to EPA action on certain of Oklahoma's impaired waters. [*See* E-mail correspondence from Liza Ward to defense counsel, dated January 21, 2008, attached hereto as Ex. "9".] On January 25, 2008, less than four business days prior to Dr. Teaf's deposition on January 31, Plaintiffs identified for the first time materials within Dr. Fisher's file that have been provided to Dr. Teaf. [*See* Ex. "4".]

e. Dr. Robert Lawrence

Pursuant to Judge Joyner's Order, Plaintiffs were required to produce all of Dr. Lawrence's expert materials by no later than December 13, 2007. Plaintiffs failed to meet this obligation. On January 25, 2008, less than one business day before Dr. Lawrence's deposition

[4] Defendants' request for relief related to Plaintiffs' contempt of the Court's January 5, 2007 discovery Order is beyond the scope of the instant Motion; nonetheless, it is relevant to the Court's consideration of Plaintiffs' conduct during the discovery phase for the PI Motion.

on January 28, Plaintiffs produced three EPA publications, including a significant guidance protocol, never before identified as materials considered by Dr. Lawrence. [*See* Ex. "4".]

f. Dr. Robert Taylor

Pursuant to Judge Joyner's Order, Plaintiffs were required to produce all of Dr. Taylor's expert materials by no later than December 13, 2007. Plaintiffs failed to meet this obligation. In fact, Dr. Taylor's deposition was taken on January 3, 2008, and it was not until January 25 that Plaintiffs advised that Dr. Taylor had been provided information from Dr. Fisher's file for his consideration. [*See* Ex. "4".]

g. Dr. Roger Olsen

By all appearances to date, Dr. Olsen is Plaintiffs' key expert for the PI Motion in that he marshaled Plaintiffs' watershed environmental sampling, and intends to offer testimony with regard to causation for the alleged bacterial contamination through his purported novel "poultry signature" analysis. Plaintiffs' failure to provide the court-ordered disclosure for Dr. Olsen is so egregious that it has completely derailed the discovery process with regard to the remaining Plaintiffs' causation experts. Pursuant to Judge Joyner's Order, Plaintiffs were required to produce all of Dr. Olsen's expert materials by no later than January 4, 2008. On January 22, 2008, just <u>two days</u> prior to his scheduled deposition, Plaintiffs produced a compact disk containing 2 databases of sampling and analytical information. One of the databases contains approximately 75,000 records, which according to Plaintiffs' counsel, contains some 200 or so new records never before disclosed to Defendants. [*See* Ex. "3".] Plaintiffs also produced on this date spreadsheets with information on municipal point source dischargers in the IRW. *Id.*

It was immediately clear to Defendants' counsel that it would be impossible to sort out the new records pertaining to environmental sampling in the databases, have the sample results

and the spreadsheets evaluated by defense experts and then prepare to depose Dr. Olsen on the new materials in less than forty-eight hours. As a consequence, defense counsel had no choice other than to postpone Dr. Olsen's deposition. The timing of Dr. Olsen's deposition was strategic and critical to Defendants. His deposition was scheduled prior to Drs. Harwood and Teaf, as both of the latter experts rely on Dr. Olsen's work product. As a consequence of Plaintiffs' failure to comply with the Court's Orders, the schedule for these two additional experts may well be destroyed, else Defendants will be prejudiced in their ability to properly prepare.[5]

The time remaining under the current schedule is insufficient to enable Defendants to analyze the new Olsen materials with their experts, prepare for Olsen, Harwood and Teaf's depositions, reschedule these depositions, and provide the results to the defense experts in order to meet Defendants' February 8 Response deadline. There is no doubt that the present circumstance is of Plaintiffs' creation, and Defendants assert that if any party should accept the consequences of violating these Orders, it is Plaintiffs. Had Plaintiffs maintained a serious commitment to full expert disclosure on the schedule ordered by the Court, they would have shown themselves entitled to the early hearing date they so vigorously argued for – but they did not.

Accordingly, Defendants request the Court conduct a conference with the Parties and establish a new schedule for Defendants' Response to the PI Motion and the evidentiary hearing. Defendants assert that the timing of these matters and the need to adjust deposition schedules and

[5] Anticipating that the Court may not rule upon the instant Motion by the time Drs. Harwood and Teaf's depositions are scheduled for January 29 and 31, respectively, Defendants may proceed with these depositions, but will reserve their right to re-call these two experts for continued deposition examination once Dr. Olsen's deposition is completed.

the schedules of their experts necessitates prompt disposition of the instant Motion, and therefore, they request the Court take this matter up as soon as its calendar will permit.

2. Plaintiffs Have Refused to Comply with Fed. R. Civ. P. 26(a)(2)(B) in Regard to Final Expert Opinions for Purposes of the PI Motion

A serious matter came to light at Dr. Engle's deposition on January 15, 2008, and again during the deposition of Dr. Fisher on January 23, 2008. At the end of both depositions, Plaintiffs' counsel inquired of his expert witness whether or not their opinions could change before the time of the hearing on the PI Motion. In both cases, both experts stated that they are still working and that there was indeed a possibility that their opinions could change. [*See* excerpts of Deposition of Bernard Engle taken on January 15, 2008 at pp.284, l.24 – 292, l.14, attached hereto as Ex. "10"; Fisher Depo., Ex. "1" at p.325, ll.19-25.] This is an issue of grave concern to Defendants that has been raised in multiple communications between counsel. In a telephonic meet and confer, Plaintiffs' counsel Mr. Bullock stated that Plaintiffs reserved the right to amend, add to or change their expert testimony, and that it was conceivable that Defendants would first learn of the altered opinions when they are elicited under direct examination at the evidentiary hearing. The e-mail communication between David Page, counsel for Plaintiffs, and Robert George, counsel for the Tyson Defendants, sets forth the positions of the respective parties. [*See* E-Mail Correspondence of January 24, 2008 attached hereto as Ex. "11."]

Plaintiffs' contention is that simply because their request for relief is "preliminary," their experts are free to change their opinions as they see fit, regardless of how they may diverge from their Affidavits and deposition testimony. Plaintiffs' position is both unsupported in the law and contrary to the Court's direction that Defendants are entitled to full disclosure of the experts' opinions and bases therefore no less than twenty-one days before the experts' depositions. Judge

Joyner's Order of December 26, 2007 held that Plaintiffs' expert disclosures must comply with Fed R. Civ. P 26(a)(2)(B). The Rule states that the expert disclosures must contain "a complete statement of all opinions the witness will express and the basis and reasons for them…" *Id.* The Advisory Committee articulated that the clear purpose for this rule is to:

> [D]isclose information regarding expert testimony sufficiently in advance of trial [so] that opposing parties have a reasonable opportunity to prepare for effective cross examination and perhaps to arrange for expert testimony from other witnesses.

Advisory Committee Notes to 1993 Amendments to Fed. R. Civ. P. 26.

Plaintiffs would have the Court view the impending bench trial as nothing more than a simple request for a status quo order in a minor case. The scale of Plaintiffs' PI Motion is anything but minor, nor does it seek to preserve the status quo. The status quo in the IRW is that ranchers, farmers, and commercial applicators land apply poultry litter each month in keeping with the statutes and regulations of the states of Oklahoma and Arkansas to grow forage. As the evidence will show, poultry litter is a vital element of the cattle-based agricultural economy of the region. Plaintiffs' quest is to bring this entire economy to a halt by turning valuable poultry litter into an entirely new (and never before recognized) class of regulated solid waste that can no longer be used to raise grasses for cattle. As the Court noted, this is an extraordinary proceeding in which Plaintiffs' bear a heavy burden of proof. [Dkt. 1411 at pp.7, ll.12-15; 35, ll.12-16.] Fairness, due process and the express provisions of Rule 26 require Plaintiffs to set forth firm and complete expert opinions for purposes of the PI Motion so that Defendants can properly prepare their own experts and case. Granted, Plaintiffs' experts may well be continuing their work toward their April 2008 deadline for producing expert reports on all issues except monetary damages, but they have spent three years preparing for this PI, and it is reasonable to expect

those experts to render firm opinions, fixed in time for purposes of determining Plaintiffs' entitlement to their extraordinary request for relief.

Plaintiffs are where they are by their own hand. They selected the timing of the PI Motion based upon the evidence in hand; they submitted expert affidavits to support their contentions; and they, alone, made the decision to violate the Court's disclosure orders. Thus, Defendants respectfully request the Court enter an Order confirming Plaintiffs' obligation to comply with Fed. R. Civ. P. 26(a)(2)(B) for purposes of the PI Motion, and that Plaintiffs' experts' testimony shall be limited to those matters set forth in their Affidavits and the opinions expressed in their depositions, to the extent those opinions rely on documents, data and materials produced by each expert in compliance with the Court's orders of December 7 and 21, 2007.

CONCLUSION

Once Plaintiffs' surprised the Court and Defendants with the delayed timing of their PI Motion and request for emergency relief, the Court accommodated Plaintiffs' request for an expedited consideration, but made it abundantly clear that due process, fairness and the Federal Rules required that Plaintiffs adhere to strict disclosure protocols and timing. Defendants have met the deposition schedule set forth by Judge Joyner with the exception of moving one deposition at Plaintiffs' request, all the while fitting in a number of fact witness depositions that will prove critical to the disposition of Plaintiffs' PI Motion. Defendants have burned the candle at both ends to meet the Court's scheduling directives only to find that Plaintiffs apparently viewed the Court's Orders as mere suggestions rather than binding obligations. Plaintiffs' failure to strictly comply with their expert disclosure obligations, whether by device or oversight, cannot be tolerated, because to do so would be entirely at the expense of Defendants' due process rights to properly and adequately prepare their defenses.

Plaintiffs' actions have rendered the schedule for deposing their remaining causation experts meaningless, and have rendered the deadline for Defendants' Responses and the date for the evidentiary hearing unworkable. Accordingly, Defendants request the Court hold a conference to establish a new schedule for disposing of the PI Motion as the Court's docket will permit, and further, enter an Order confirming Plaintiffs' obligation to comply with Fed. R. Civ. P. 26(a)(2)(B) for purposes of the PI Motion, and that Plaintiffs' experts' testimony shall be limited to those matters set forth in their Affidavits and the opinions expressed in their depositions, to the extent those opinions rely on documents, data and materials produced by each expert in compliance with the Court's Orders of December 7 and 26, 2007.

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CERTIFICATE OF SERVICE

I certify that on the 28th day of January 2008, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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